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WRP ASIA PACIFIC SDN BHD v. AHMAD ZUL-QARNAIN IBRAHIM

HIGH COURT MALAYA, KUALA LUMPUR
ATAN MUSTAFFA YUSSOF AHMAD J
[ORIGINATING SUMMONS NO: WA-24NCC-315-07-2024]
31 OCTOBER 2024

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Abstract – *(i) Rule 24 of the Companies (Winding-Up) Rules 1972 imposes a mandatory statutory obligation to advertise and gazette the winding-up petition upon it being filed. Even the court's inherent jurisdiction could not be invoked to disregard or act outside of this mandatory statutory provision; (ii) Once a winding-up petition has been presented, the winding-up court hearing the petition has full jurisdiction over the proceedings, and any application to stay or restrain those proceedings must be made therein; (iii) The law is clear that a judgment debt remains undisputed unless and until the judgment is stayed or set aside. The mere filing of an appeal or stay application does not by itself render a judgment debt disputed*

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COMPANY LAW: *Winding up – Petition – Injunction to restrain proceeding with petition – Whether court has jurisdiction to grant injunction restraining advertisement of winding-up petition after presentation – Appropriate forum to hear injunction application – Whether winding-up court hearing petition has full jurisdiction over proceedings – Whether filing of petition abuse of process – Companies (Winding-Up) Rules 1972, r. 24*

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CIVIL PROCEDURE: *Originating summons – Injunctive reliefs – Application for order restraining advertisement and/or gazetting of petition – Whether r. 24 of Companies (Winding-Up) Rules 1972 imposes mandatory statutory obligation to advertise and gazette petition upon it being filed – Whether court precluded from granting injunction to restrain advertisement and gazetting of petition – Appropriate forum to hear injunction application – Whether winding-up court hearing petition has full jurisdiction over proceedings – Whether filing of petition abuse of process – Whether sufficient case for court to exercise its equitable jurisdiction to grant injunction*

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CIVIL PROCEDURE: *Striking out – Application for – Application to strike out originating summons – Whether action scandalous, vexatious and frivolous – Whether abuse of court process – Whether plain and obvious case that action unsustainable*

I

This judgment concerned an application to restrain a winding-up petition filed pursuant to an unpaid judgment debt, where the judgment debtor has both appealed against the judgment and applied for a stay of execution. The plaintiff was a company incorporated in Malaysia while the defendant was a Malaysian citizen who was the legal representative of his mother, Dato Puan Sri Hamidah Abdullah, who was declared a mentally disordered person *via* a court order. The defendant commenced an action against the plaintiff and others in the High Court ('Suit 68'). The High Court delivered judgment in favour of the defendant, ordering the plaintiff to pay, *inter alia*, a sum of RM7,986,119.34. The plaintiff filed an appeal against the judgment in the Court of Appeal and also filed an application for stay of execution of the judgment ('stay application'). The defendant issued a notice pursuant to s. 466(1)(a) of the Companies Act 2016 to the plaintiff. After the 21-day notice period elapsed without payment, the defendant filed a winding-up petition against the plaintiff at the High Court ('petition'). The originating summons filed by the plaintiff sought several orders pursuant to ss. 50, 51(1) and 52(1) of the Specific Relief Act 1950, O. 29 r. 1 and O. 92 r. 4 of the Rules of Court 2012 ('ROC'). Specifically, the plaintiff sought, *inter alia*: (i) an order restraining the defendant from proceeding with the petition; (ii) alternatively, an order restraining the defendant from advertising and/or gazetting the petition in any local newspaper and/or Government *Gazette*; and (iii) alternatively, an order restraining the defendant from taking any further steps based on the petition. The defendant's notice of application sought to strike out the plaintiff's originating summons pursuant to O. 18 r. 19(1)(a) and/or (b) and/or (c) and/or (d) of the ROC. The issues that arose were: (i) whether this court had the jurisdiction to grant an injunction restraining advertisement of a winding up petition after presentation; (ii) whether this court was the appropriate *forum* to hear the plaintiff's injunction application; and (iii) whether the defendant's filing of the petition was an abuse of process.

Held (striking out plaintiff's originating summons):

(1) Rule 24 of the Companies (Winding-Up) Rules 1972 imposes a mandatory statutory obligation on the defendant to advertise and gazette the petition upon it being filed. In the present circumstances, this court was precluded from granting an injunction to restrain the advertisement and gazetting of the petition. The *ratio decidendi* in *People Realty Sdn Bhd v. Red Rock Construction Sdn Bhd* is directly on point and binding on this court. The reasoning was clear – the said r. 24 imposes a mandatory statutory obligation that could not be circumvented through the court's inherent powers or discretion to grant injunctive relief. Even the court's inherent jurisdiction could not be invoked to disregard or act outside of this mandatory statutory provision. If indeed there was an abuse of

process, the appropriate recourse would be to strike out the petition itself, not to restrain its advertisement. Therefore, the plaintiff's application for interim injunctive relief to restrain the advertisement and gazetting of the petition was plainly unsustainable and ran contrary to both binding appellate authority and the express provisions of the Companies (Winding-Up) Rules 1972. (paras 26-29)

(2) The defendant's winding-up petition was duly served on the plaintiff on 5 July 2024, a full week before the plaintiff commenced the present action by filing this originating summons on 12 July 2024. By reason of the service of the petition, the winding-up court was already seized of the matter and had supervisory jurisdiction over the winding-up proceedings as of 5 July 2024. In such circumstances, it was incumbent on the plaintiff, if it desired to restrain the winding-up proceedings, to file any necessary application for injunctive relief before the winding-up court itself rather than commencing a separate action in this court. Once a winding-up petition has been presented, the winding-up court hearing the petition has full jurisdiction over the proceedings, and any application to stay or restrain those proceedings must be made therein. It would be most inappropriate for this court, sitting in its ordinary civil jurisdiction, to entertain an application that would have the effect of interfering with winding-up proceedings that were already underway before a different High Court Judge sitting in the winding-up court. This court had no jurisdiction to grant an injunction in respect of matters which were plainly within the jurisdiction of and before the winding-up court. The winding-up court is a specialised *forum* with its own rules and procedures for dealing with restraining injunctions within the context of winding-up proceedings. (paras 36 & 37)

(3) A judgment debt remains undisputed unless and until the judgment is stayed or set aside. The mere filing of an appeal or stay application does not by itself render a judgment debt disputed. The definitive legal position is that a judgment creditor is entitled to take all legal means of execution so long as the judgment remains valid and enforceable, and a stay has not been granted. In that sense, it could not be said that there was a *bona fide* dispute of the debt at this juncture. The defendant was merely exercising its statutory rights as a judgment creditor to issue a statutory demand and winding-up petition premised on the company's inability to settle the judgment debt. (para 42)

(4) Even if the stay application was allowed, the defendant would not in law be precluded from proceeding with the petition, as winding-up proceedings and execution proceedings are distinct legal regimes. A winding-up petition does not constitute a mode of execution and therefore a stay of execution does not prevent a winding-up petition

from being presented. Ultimately, what is required to sustain a winding-up petition is proof that the company is unable to pay its debts, and an unsatisfied judgment debt suffices for this purpose even if execution had been stayed. The timing of the petition alone did not constitute an abuse of process in the legal sense to justify the grant of an injunction. The plaintiff's contention that the petition was filed strategically to defeat the stay and appeal was ultimately speculative in nature and fell short of establishing an abuse of process, especially when winding-up proceedings and appeal proceedings were separate matters. In light of the preponderance of authorities holding that a judgment debt is undisputed until a stay is granted, and that winding-up proceedings may be brought even if execution is stayed, the defendant's conduct did not amount to an abuse of process. (paras 42-44)

(5) The plaintiff had not made out a sufficient case for this court to exercise its equitable jurisdiction to grant an injunction restraining the defendant from advertising or gazetting the petition that had already been presented in the winding-up court. The plaintiff's application was therefore dismissed and the defendant's application to strike out the plaintiff's originating summons was allowed as it was plain and obvious that the action was unsustainable. (paras 45 & 46)

Case(s) referred to:

ASM Development (KL) Sdn Bhd v. Econpile (M) Sdn Bhd [2020] MLJU 282 ***(refd)***
Azman & Tay Associates Sdn Bhd v. Sentul Raya Sdn Bhd [2002] 4 CLJ 391 HC ***(refd)***
Fortuna Holdings Pty Ltd v. The Deputy Commissioner of Taxation of The Commonwealth of Australia [1976] 2 ACLR 349 ***(refd)***
Kumpulan Liziz Sdn Bhd (In Liquidation) v. Pembinaan Azam Jaya Sdn Bhd [2021] CLJU 2043; [2021] 1 LNS 2043 CA ***(refd)***
Maril-Rionebel (M) Sdn Bhd & Anor v. Perdana Merchant Bankers Bhd & Other Appeals [2001] 3 CLJ 248 CA ***(refd)***
Mobikom Sdn Bhd v. Inmiss Communications Sdn Bhd [2007] 3 CLJ 295 CA ***(refd)***
Pacific & Orient Insurance Co Bhd v. Muniammah Muniandy [2011] 1 CLJ 947 CA ***(refd)***
People Realty Sdn Bhd v. Red Rock Construction Sdn Bhd [2008] 1 CLJ 632 CA ***(foll)***
Permata Trans Offshore Sdn Bhd v. New Wing Energy Sdn Bhd [2019] CLJU 1273; [2019] 1 LNS 1273 HC ***(refd)***
RHB Bank Bhd v. Gunasingam Ramasingam [2002] 5 CLJ 544 HC ***(refd)***
Sri Jeluda Sdn Bhd v. Pentalink Sdn Bhd [2008] 4 CLJ 359 CA ***(refd)***

Legislation referred to:

Companies (Winding-Up) Rules 1972, r. 24
Companies Act 2016, s. 466(1)(a)
Rules of Court 2012, O. 18 r. 19(1)(a), (b), (c), (d), O. 29 r. 1, O. 92 r. 4
Specific Relief Act 1950, ss. 50, 51(1), 52(1)

For the plaintiff - Aqila Zulaiqha Zulkifli, Mathew Thomas, Philip & Lee Sin Yee; M/s Thomas Philip
For the defendant - Gideon Tan & Yip Man Fei; M/s Gideon Tan Razali Zaini

Reported by Suhainah Wahiduddin

JUDGMENT

Atan Mustaffa Yussof Ahmad J:

[1] This judgment concerns an application to restrain a winding-up petition filed pursuant to an unpaid judgment debt, where the judgment debtor has both appealed against the judgment and applied for a stay of execution. The key issues before this court are whether it has jurisdiction to grant injunctive relief to restrain winding-up proceedings in another court, and if so, whether such relief should be granted in the present circumstances. The matter arose after the defendant obtained judgment following a full trial, but before the hearing of the plaintiff's stay application and while its appeal remains pending. At the heart of the dispute is whether the winding-up petition constitutes an abuse of process, and whether r. 24 of the Companies (Winding-Up) Rules 1972, which requires advertisement and gazetting of a winding-up petition, is mandatory in nature and precludes injunctive relief. The circumstances require this court to balance the competing interests of a judgment creditor's right to enforce its judgment against the potential prejudice to a judgment debtor if a winding-up petition proceeds while substantive challenges to the underlying judgment remain undetermined.

Background Facts

[2] The plaintiff, WRP Asia Pacific Sdn Bhd (Company No. 147817-V), is a company incorporated in Malaysia. The defendant, Ahmad Zul-Qarnain bin Ibrahim, is a Malaysian citizen who is the legal representative of his mother, Dato' Puan Sri Hamidah binti Abdullah ("PSH"), who was declared a mentally disordered person on 4 May 2021 *via* a court order in Kuala Lumpur High Court Suit No. WA-24NCvC-1940-10/2020.

[3] On 15 February 2022, the defendant commenced an action against the plaintiff and others in the Kuala Lumpur High Court *via* Suit No. WA-22NCC-68-02/2022 ('suit 68'). On 15 March 2024, the High Court delivered judgment in favour of the defendant, ordering the plaintiff to pay:

(i) a sum of RM7,986,119.34 (for the period from 1 January 2017 to 27 December 2021);

(ii) interest at 5% per annum on the judgment sum from the date of judgment until full settlement; and

(iii) costs of RM50,000.

[4] On 3 April 2024, the plaintiff filed an appeal against the judgment in the Court of Appeal *via* Appeal No. W-02(NCC)(W)-563-04/2024. The hearing of this appeal has been fixed for 25 July 2025.

[5] On 12 June 2024, the plaintiff filed an application for stay of execution of the judgment ("stay application"). This application is fixed for hearing on 10 October 2024.

[6] On 5 June 2024, the defendant issued a notice pursuant to s. 466(1)(a) of the Companies Act 2016 to the plaintiff. After the 21-day notice period elapsed without payment, the defendant filed a winding-up petition against the plaintiff on 2 July 2024 in the Kuala Lumpur High Court (Winding Up No. WA-28NCC-601-07/2024) ("petition"). The petition was served on the plaintiff on 5 July 2024 and is fixed for hearing on 12 September 2024.

[7] On 12 July 2024, the plaintiff filed this originating summons seeking to restrain the defendant from proceeding with the petition, advertising it, and/or taking further steps based on the petition. This application was supported by an affidavit affirmed by Lee Chia Chit, a director of the plaintiff.

[8] On 18 July 2024, the defendant filed an application to strike out the plaintiff's originating summons in encl. 8, supported by the defendant's affidavit of the same date.

[9] The plaintiff subsequently filed an affidavit in reply on 26 July 2024, maintaining its position regarding the injunctive relief sought.

[10] The hearing date of 10 October 2024 for the stay application was set during a case management session held on 27 June 2024. The matter concerns, among other things, a dispute over the assignment of debt, with reference to a proof of debt dated 11 September 2019 filed by Harvest Asset Invest Ltd.

The Originating Summons (Enclosure 1)

[11] The originating summons filed by the plaintiff on 12 July 2024 seeks several orders pursuant to ss. 50, 51(1) and 52(1) of the Specific Relief Act 1950, O. 29 r. 1 and O. 92 r. 4 of the Rules of Court 2012. Specifically, the plaintiff seeks: (i) an order restraining the defendant from proceeding with the petition; (ii) alternatively, an order restraining the defendant from advertising and/or gazetting the petition in any local newspaper and/or Government *Gazette*; (iii) alternatively, an order restraining the defendant from taking any further steps based on the petition; (iv) costs of the application to be paid by the defendant; and (v) such further relief as deemed fit by the court.

The Defendant's Striking Out Application In Enclosure 8

[12] The defendant's notice of application dated 18 July 2024 seeks to strike out the plaintiff's originating summons pursuant to O. 18 r. 19(1)(a) and/or (b) and/or (c) and/or (d) of the Rules of Court 2012. The grounds stated are: (i) the plaintiff failed to expedite their stay application which is fixed for 10 October 2024; (ii) the plaintiff failed to invoke the jurisdiction of the winding-up court for interim injunctive relief and instead filed a fresh originating summons; (iii) the present originating summons is intended to circumvent the plaintiff's own pending stay application and the winding-up

proceeding, and this court has no jurisdiction over the pending winding-up proceedings, making the originating summons scandalous, vexatious, frivolous and an abuse of court process; (iv) the interim injunctive reliefs sought are academic as r. 24 of the Companies (Winding-Up) Rules 1972 imposes a mandatory statutory obligation on the defendant to advertise and gazette the petition; and (v) this court exercising its civil court jurisdiction cannot grant interim injunctive relief to restrain winding-up proceedings of another court exercising its winding-up court jurisdiction.

Submissions Of Parties

The Plaintiff's Submissions

[13] The plaintiff submits that this court has jurisdiction to grant an injunction to restrain the defendant from advertising and/or gazetting the petition where there has been an abuse of process. The filing of the originating summons is therefore not academic, scandalous, vexatious, frivolous, or an abuse of court process.

[14] It is further contended that the petition is an abuse of process and bound to fail. The plaintiff highlights that the defendant was well aware of the stay application fixed for hearing on 10 October 2024, yet proceeded to file the petition on 2 July 2024. The hearing date in October 2024 was not of the plaintiff's choosing but was proposed by the court during case management on 27 June 2024.

[15] The plaintiff's position is that if it succeeds in the stay application, the judgment sum would be regarded as a disputed debt. Moreover, the petition was filed by the defendant to exert undue pressure on the plaintiff and is an attempt to defeat the stay application.

[16] According to the plaintiff, it has satisfied all requirements for an injunction, namely: there are serious issues to be tried; damages would not be an adequate remedy; and the balance of convenience lies in favour of granting the originating summons. The plaintiff maintains it will suffer irreparable harm and damages that could not be compensated by monies if the defendant is not restrained from advertising and/or gazetting the petition.

[17] The plaintiff also points out that despite the defendant's assurance of ability to return the judgment sum (in the event the plaintiff succeeds in its appeal), no evidence has been provided to substantiate this claim. This is particularly significant given that PSH has been declared mentally disordered and is under the care of a committee, raising concerns about the recovery of the judgment sum if paid.

The Defendant's Submissions

[18] The defendant submits that the interim injunctive relief sought by the plaintiff is redundant as r. 24 of the Companies (Winding-Up) Rules 1972 imposes a mandatory statutory obligation, rather than a directory requirement, on the defendant to advertise and gazette the petition.

[19] It is argued by the defendant that the filing of the present originating summons constitutes an abuse of court process as it is intended to shackle the winding-up court's jurisdiction. The defendant points out that the plaintiff failed to take any steps to expedite or bring forward the hearing for its stay application fixed for 10 October 2024.

[20] The defendant's position is that there is no *bona fide* dispute of the debt pursuant to the judgment, as the subject matter in Suit 68 had been decided after a full trial on its merits where parties had ventilated their case at length. As such, there are no serious questions to be tried to maintain the *status quo*.

[21] According to the defendant, the fact that the plaintiff is a going concern is irrelevant. It is maintained that the plaintiff is deemed insolvent as it failed to satisfy the s. 466 notice within 21 days upon being served or pay the amount owing when it fell due.

[22] The defendant contends that PSH's mental disorder status is irrelevant as it is not in dispute that the defendant is her legal representative. The committee appointed is responsible for the management of PSH's business and/or financial affairs, and there is purportedly no issue in the ability to return the judgment sum paid if the plaintiff succeeds in its appeal.

[23] Finally, it is submitted that this court, exercising its civil court jurisdiction, cannot grant any interim injunctive relief to restrain winding-up proceedings of another court exercising its winding-up court jurisdiction. The defendant maintains that once a winding-up petition is filed, the issue at hand is to be determined before a winding-up court instead of this court under its civil court jurisdiction.

Analysis And Findings Of The Court

Whether This Court Has Jurisdiction To Grant An Injunction Restraining Advertisement Of A Winding-up Petition After Presentation

[24] The plaintiff submits that this court has the jurisdiction and power to grant an injunction to restrain the defendant from advertising and/or gazetting the petition where there has been an abuse of process. The plaintiff argues that based on the cases of *Fortuna Holdings Pty Ltd v. The Deputy Commissioner of Taxation of The Commonwealth of Australia* [1976] 2 ACLR 349; *ASM Development (KL) Sdn Bhd v. Econpile (M) Sdn Bhd* [2020] MLJU 282; and *Mobikom Sdn Bhd v. Inmiss Communications Sdn Bhd* [2007] 3 CLJ

295; [2007] 3 MLJ 316, the court may restrain the advertisement of a winding-up petition that has been presented if it amounts to an abuse of the court's process.

[25] The defendant in response submits that the injunctive relief sought by the plaintiff is academic and unsustainable as r. 24 of the Companies (Winding-Up) Rules 1972 imposes a mandatory statutory obligation on the defendant to advertise and gazette the petition upon it being filed. The defendant relies heavily on the Court of Appeal decision in *People Realty Sdn Bhd v. Red Rock Construction Sdn Bhd* [2008] 1 CLJ 632. In that case, the appellant sought to restrain advertisement of a winding-up petition that was based on an unpaid judgment debt, arguing that it had a cross-claim exceeding the judgment sum. The Court of Appeal, in dismissing the appeal, held unequivocally that "once a winding-up petition is filed, the court is precluded from granting an injunction against advertisement or gazettal of the petition." The Court of Appeal specifically rejected arguments that the court's inherent powers could be invoked to restrain advertisement, stating that "r. 24 of the Rules clearly governs this case and prescribes a requirement of advertisement of petition upon it being filed. By its terms, the requirement is mandatory; and surely the court cannot disregard the provision and act outside it."

[26] Having carefully considered the submissions of both parties and the authorities relied upon, I am constrained to agree with the defendant that this court is precluded from granting an injunction to restrain the advertisement and gazetting of the petition in the present circumstances. The *ratio decidendi* in *People Realty* is directly on point and binding on this court. The Court of Appeal's reasoning was clear – r. 24 imposes a mandatory statutory obligation that cannot be circumvented through the court's inherent powers or discretion to grant injunctive relief. As Nik Hashim JCA (as he then was) emphasised in *People Realty*, even the court's inherent jurisdiction cannot be invoked to disregard or act outside of this mandatory statutory provision.

[27] The Court of Appeal's position in *People Realty* aligned with the earlier High Court decision in *Azman & Tay Associates Sdn Bhd v. Sentul Raya Sdn Bhd* [2002] 4 CLJ 391 where Vincent Ng J (as he then was) held that "the court is not empowered to make any order to restrain or injunct the petitioners from carrying out their statutory obligation to comply with r. 24." Indeed, the Court of Appeal in *People Realty* specifically cited and approved this statement from *Azman & Tay*, thereby elevating it to binding appellate authority. This principle has since been consistently applied and represents the current state of the law.

[28] While I acknowledge that the line of authorities relied upon by the plaintiff, particularly the *Fortuna Holdings* case, indicate that the court may restrain advertisement of a winding-up petition where there is an abuse of process, these cases must be read in light of the clear and binding authority of *People Realty*. The Court of Appeal's pronouncement leaves no room for exceptions based on abuse of process – the statutory obligation under r. 24 is mandatory and cannot be displaced by injunctive relief. If indeed there is an abuse of process, the appropriate recourse would be to strike out the petition itself, not to restrain its advertisement.

[29] Therefore, I find that the plaintiff's application for interim injunctive relief to restrain the advertisement and gazetting of the petition is plainly unsustainable and runs contrary to both binding appellate authority and the express provisions of the Companies (Winding-Up) Rules 1972. To grant such an injunction would be to directly contravene the principle established in *People Realty*.

Whether This Court Is The Appropriate Forum To Hear The Plaintiff's Injunction Application

[30] The plaintiff submits that the appropriate *forum* for its injunction application to be heard is this court, as the defendant has taken contradictory positions on whether the winding-up court is precluded from granting an injunction after a winding-up petition has been presented.

[31] The defendant strongly contends that the plaintiff had failed to properly invoke the jurisdiction of the winding-up court by filing its injunction application therein, when the winding-up court's jurisdiction had already been invoked by the filing and service of the petition. The defendant submits that once a winding-up petition has been presented, any application to restrain those proceedings must be taken out before the winding-up court itself and not this court sitting in its ordinary civil jurisdiction.

[32] This precise jurisdictional issue was comprehensively addressed in *Permata Trans Offshore Sdn Bhd v. New Wing Energy Sdn Bhd* [2019] CLJU 1273; [2019] 1 LNS 1273; [2019] MLJU 922. In that case, after being served with a winding-up petition, the plaintiff filed an originating summons and *ex parte* application seeking an interim injunction to restrain the defendant from proceeding with the winding-up petition. Similarly to the present case, this was done after the winding-up petition had already been filed and served. Ong Chee Kwan JC (as he then was) held that while the High Courts may have jurisdiction to grant injunctive relief even after a winding-up petition has been filed, the winding-up court would be the more appropriate *forum* to consider and grant such relief.

[33] His Lordship's reasoning is particularly instructive. At para. [20], he explained that "where a winding up petition has already been presented, it seems to me that consistent with the statement by McGarvie J, if any application is to be made to prevent an abuse of the court process, such application should rightfully be made in the court where the proceedings have been commenced, namely, the winding up court."

[34] The learned judge went on to emphasise at para. [37] that "there are sound reasons for the civil courts not to exercise the jurisdiction to grant an injunction after the winding up petition has been presented. Whilst they may be no jurisdictional bar for the civil courts to grant an injunction after the winding up petition has been filed, it should only be exercised in rare and exceptional cases where it is not expedient or if irreparable harm will be suffered by the company if it is required to file its application for the injunction before the winding up court."

[35] I have carefully considered the contrasting arguments put forth by the parties on this issue, and I find myself persuaded by the force of the defendant's submissions and the clear guidance provided in *Permata Trans Offshore*. It is not in dispute that the defendant's winding-up petition was duly served on the plaintiff on 5 July 2024, a full week before the plaintiff commenced the present action by filing this originating summons on 12 July 2024. By reason of the service of the petition, the winding-up court was already seized of the matter and had supervisory jurisdiction over the winding-up proceedings as of 5 July 2024.

[36] In such circumstances, it was incumbent on the plaintiff, if it desired to restrain the winding-up proceedings, to file any necessary application for injunctive relief before the winding-up court itself rather than commencing a separate action in this court. I agree with the defendant's argument based on the authorities of *Azman & Tay Associates* and *Permata Trans Offshore* that once a winding-up petition has been presented, the winding-up court hearing the petition has full jurisdiction over the proceedings, and any application to stay or restrain those proceedings must be made therein. It would be most inappropriate for this court, sitting in its ordinary civil jurisdiction, to entertain an application that would have the effect of interfering with winding-up proceedings that are already underway before a different High Court Judge sitting in the winding-up court.

[37] As held by the High Court in *Permata Trans Offshore*, this court simply has no jurisdiction to grant an injunction in respect of matters which are plainly within the jurisdiction of and before the winding-up court. The winding-up court is a specialised *forum* with its own rules and procedures for dealing with restraining injunctions within the context of winding-up proceedings. It is not for this court to interfere by granting an injunction over

live proceedings in the winding-up court on the tenuous basis of contradictory positions taken by the defendant, which in any event does not alter the legal position that any injunction should have been applied for in the winding-up court itself.

[38] The plaintiff's argument that this court should deal with the injunction because the defendant had allegedly argued that the winding-up court is precluded from doing so is plainly unsustainable, as the Court of Appeal case of *People Realty Sdn Bhd v. Red Rock Construction Sdn Bhd* was not a case dealing with the jurisdiction of this court to grant an injunction against winding-up proceedings, but rather dealt with the inability of any court to restrain advertisement once a winding-up petition is filed.

Whether The Defendant's Filing Of The Petition Is An Abuse Of Process

[39] The plaintiff strenuously argues that the defendant's action of filing the petition despite having full knowledge of the plaintiff's pending stay application amounts to a blatant abuse of process. The plaintiff contends that if the stay application is allowed, the judgment debt forming the basis of the petition would be rendered disputed, relying on the Court of Appeal decision in *Kumpulan Liziz Sdn Bhd (In Liquidation) v. Pembinaan Azam Jaya Sdn Bhd* [2021] CLJU 2043; [2021] 1 LNS 2043; [2021] MLJU 2425 where it was held that "Legally speaking, if a judgment has been obtained for a debt, then until that judgment is set aside or stayed, that debt is undisputed". The plaintiff also cites *Pacific & Orient Insurance Co Bhd v. Muniammah Muniandy* [2011] 1 CLJ 947 where the Court of Appeal held that "A valid and enforceable judgment of court as in the present case, (unless set aside or stayed) cannot be considered a disputed debt." As such, the plaintiff submits that the defendant's filing of the petition was a calculated move to defeat the plaintiff's stay application and render its appeal nugatory, which constitutes an abuse of process.

[40] The defendant vehemently disputes that there is any *bona fide* dispute of the judgment debt, highlighting that the same was obtained after a full trial on the merits where parties had ample opportunity to ventilate their respective cases. The defendant argues that the judgment debt had merged with the judgment itself and any dispute as to its correctness have been conclusively laid to rest, placing reliance on the Court of Appeal decisions in *Pacific & Orient Insurance* as well as *Sri Jeluda Sdn Bhd v. Pentalink Sdn Bhd* [2008] 4 CLJ 359; [2008] 3 MLJ 692 (COA) where it accepted that a judgment remains a good judgment until it was set aside and the fact that an appeal had been lodged did not establish that a debt was disputed. Therefore, the defendant submits that the mere filing of an appeal or stay application does not *ipso facto* render the judgment debt disputed until and unless the judgment is actually stayed or set aside. The defendant further argues that there is no legal impediment against commencing winding up proceedings even if a stay of execution is granted, as winding-up proceedings

and execution proceedings constitute separate legal regimes. In this regard, the defendant cites the Court of Appeal case of *Maril-Rionebel (M) Sdn Bhd & Anor v. Perdana Merchant Bankers Bhd & Other Appeals* [2001] 3 CLJ 248 where it was observed that "a petition for winding up is not execution. For a winding up petition is not based upon any judgment of a court." This proposition of law was reinforced in *RHB Bank Bhd v. Gunasingam Ramasingam* [2002] 5 CLJ 544.

[41] There is no gainsaying that as of the date of filing of the petition on 2 July 2024, the hearing date of the plaintiff's stay application had already been fixed on 10 October 2024, and the defendant was indubitably well aware of the same. The defendant's conduct of proceeding to file the petition despite knowing full well that the plaintiff was vigorously pursuing a stay of the judgment debt may seem calculated to undermine the stay application.

[42] Be that as it may, the law is clear that a judgment debt remains undisputed unless and until the judgment is stayed or set aside. The Court of Appeal authorities in *Pacific & Orient Insurance* and *Sri Jeluda Sdn Bhd* have conclusively determined that the mere filing of an appeal or stay application does not by itself render a judgment debt disputed. The definitive legal position is that a judgment creditor is entitled to take all legal means of execution so long as the judgment remains valid and enforceable, and a stay has not been granted. In that sense, it cannot be said that there is a *bona fide* dispute of the debt at this juncture. The defendant was merely exercising its statutory rights as a judgment creditor to issue a statutory demand and winding-up petition premised on the company's inability to settle the judgment debt.

[43] I also accept the defendant's argument that even if the stay application is allowed, the defendant would not in law be precluded from proceeding with the petition, as winding-up proceedings and execution proceedings are distinct legal regimes. The Court of Appeal in *Maril-Rionebel* made it abundantly clear that a winding-up petition does not constitute a mode of execution and therefore a stay of execution does not prevent a winding-up petition from being presented. Ultimately, what is required to sustain a winding-up petition is proof that the company is unable to pay its debts, and an unsatisfied judgment debt suffices for this purpose even if execution has been stayed.

[44] In the circumstances, while I can appreciate the plaintiff's grievance that the filing of the petition is an attempt to stultify the stay application, the timing of the petition alone does not constitute an abuse of process in the legal sense to justify the grant of an injunction. The plaintiff's contention that the petition was filed strategically to defeat the stay and appeal is ultimately speculative in nature and falls short of establishing an abuse of process,

especially when winding-up proceedings and appeal proceedings are separate matters. In light of the preponderance of authorities holding that a judgment debt is undisputed until a stay is granted, and that winding-up proceedings may be brought even if execution is stayed, I am constrained to find that the defendant's conduct does not amount to an abuse of process. The plaintiff's argument is therefore rejected.

Conclusion

[45] For the reasons set out above, I find that the plaintiff has not made out a sufficient case for this court to exercise its equitable jurisdiction to grant an injunction restraining the defendant from advertising or gazetting the petition that has already been presented in the winding-up court. The plaintiff's application is therefore dismissed with costs.

[46] I also allow the defendant's application to strike out the plaintiff's originating summons as it is plain and obvious that the action is unsustainable. The originating summons is an abuse of process as it attempts to circumvent the plaintiff's pending stay application and winding-up proceedings in the winding-up court. This court does not have the jurisdiction to grant the injunctive relief sought which would interfere with the proceedings in the winding-up court. The originating summons is therefore struck out with costs.

[47] I order costs of RM25,000 both encls. 1 and 8 in favour for the defendant.